

ARKANSAS SUPREME COURT

No. CR 06-1176

ALVIN LAMONT DAVIS
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered January 18, 2007

PRO SE MOTIONS FOR ACCESS TO
RECORD AND FOR EXTENSION OF
TIME TO FILE APPELLANT’S BRIEF
[CIRCUIT COURT OF PULASKI
COUNTY, CR 91-481, HON. CHRIS
PIAZZA, JUDGE]

APPEAL DISMISSED; MOTIONS
MOOT.

PER CURIAM

In 1992, Alvin Lamont Davis was convicted by a jury of capital murder and sentenced to life imprisonment without parole in the Arkansas Department of Correction. This court affirmed. *Davis v. State*, 310 Ark. 582, 839 S.W.2d 182 (1992). Subsequently, in 2005, appellant sought leave of this court to proceed on a writ of error *coram nobis*. This court denied the petition. *Davis v. State*, CR 92-575 (Ark. Oct. 6, 2005) (*per curiam*).

In 2006, appellant filed in the trial court a *pro se* petition for writ of *habeas corpus* pursuant to Act 2250 of 2005, codified at Ark. Code Ann. §§16-112-201–07 (Repl. 2006).¹ The trial court denied the petition without a hearing, and appellant, proceeding *pro se*, has lodged an appeal here from that order.

Now before us are appellant’s *pro se* motions for access to the record and for an extension

¹This act, with an effective date of August 12, 2005, amended Act 1780 of 2001.

of time to file appellant's brief. We need not consider these motions as it is apparent that appellant could not prevail in this appeal if it were permitted to go forward because he failed to demonstrate a legitimate basis for the writ. Accordingly, we dismiss the appeal and hold the motions moot. This court has consistently held that an appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *See Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*).

We do not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous or clearly against the preponderance of the evidence. *Greene v. State*, 356 Ark. 59, 146 S.W.3d 871 (2004). A finding is clearly erroneous when, although there is evidence to support it, the appellate court after reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Flores v. State*, 350 Ark. 198, 85 S.W.3d 896 (2002).

In his original petition, appellant sought to set aside or vacate the judgment entered based upon scientific testing of evidence in support of his claim of actual innocence. He maintained that the fingerprints obtained from the evidence introduced at this trial should be checked against the Automated Fingerprint Identification System ("AFIS") database, as AFIS was not in operation at the time of his trial. Appellant further claimed that a witness at trial lied about appellant's involvement in the matter, thus placing his identity at issue.

Act 2250 of 2005 provides that a writ of habeas corpus can issue based upon new scientific evidence proving a person actually innocent of the offense or offenses for which he or she was convicted. *See* Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2006) and sections 16-112-201–207; *see also Echols v. State*, 350 Ark. 42, 84 S.W.3d 424 (2002) (*per curiam*) (decision under prior law).

Appellant filed his petition after the effective date of Act 2250.

As revised, there are a number of predicate requirements that must be met under Act 2250 before a circuit court can order that testing be done. *See* sections 16-112-201–203. Among these prerequisites, the statute states that if the evidence was previously subjected to testing, then the petitioner must request testing using a new method or technology that is substantially more probative than the prior testing. Section 16-112-202(3). Also, the proposed testing of the specific evidence must produce new material evidence that would both support the theory of defense presented at trial and raise a reasonable probability that the person making a motion under this section did not commit the offense. Section 16-112-202(8).

In the instant matter, appellant claimed that no fingerprints were taken from a telescope of a rifle that was used to beat the victim. He asked that this evidence be tested for fingerprints. He also maintained that the fingerprints and palm prints recovered from the glass foyer at the restaurant were “never adequately tested or sent through the AFIS System.” However, evidence adduced at the trial disputes appellant’s allegations.

Prints were taken from both the scope and the restaurant. The prints were reviewed for comparison by the Little Rock Police Department and the Arkansas State Crime Lab. Ralph Turbyfill, the director of latent fingerprint examiners at the State Crime Lab, verified the comparisons made by the Little Rock police. He testified that he personally compared the fingerprints and palm prints taken from the foyer at the crime scene to appellant’s fingerprints. He found that the recovered fingerprints and palm prints exactly matched appellant’s prints taken from his fingerprint card. No testimony at trial indicated that the prints from the scope belonged to appellant.

As the fingerprints found on the scope and the fingerprints and palm prints found in the restaurant foyer were collected and previously sent for identification, the requirement of section 16-112-202(3) cannot be met. The evidence enumerated by appellant for testing under Act 2250 has already been subjected to the same testing that appellant requested in his petition. Moreover, simply comparing the collected and previously-tested fingerprints against the AFIS database does not constitute “a new method or technology that is substantially more probative than the prior testing.”

Appellant would also be unable to meet the requirements of section 16-112-202(8). The proposed testing of fingerprints and palm prints would neither produce new material evidence that would support the theory of defense presented at trial nor would it raise a reasonable probability that appellant did not commit the offense. Expanding the database of prints for comparison contained in the AFIS system does not nullify that appellant’s fingerprints and palm prints from the restaurant foyer were positively identified twice through manual inspection.

Additionally, the fingerprints from the scope of the rifle were identified as belonging to another person. As this information was already presented to the jury, finding a match in the AFIS for these prints would present no new issues for the jury’s consideration. The presence of another person’s fingerprints on the scope does not rise to the level of reasonable probability that appellant did not commit this crime, regardless of whether the fingerprints belonged to one of three men appellant specifically named for testing.

Appellant’s petition did not meet the burden imposed by section 16-112-202(3), as the evidence had already been tested using the same method, and section 16-112-202(8), as the requested testing would not produce new material evidence that would support appellant’s theory of defense presented at trial and raise a reasonable probability that appellant did not commit the offense.

Appeal dismissed; motions moot.